

AMENDED IN SENATE MAY 21, 2014

AMENDED IN SENATE APRIL 29, 2014

AMENDED IN SENATE APRIL 10, 2014

SENATE BILL

No. 1197

Introduced by Senator Pavley

February 20, 2014

An act to amend Sections 1203c and 3453 of, and to add Section 2085.6 to, the Penal Code, *and to amend Section 19280 of the Revenue and Taxation Code*, relating to restitution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1197, as amended, Pavley. Restitution: collection by counties.

Existing law requires that restitution fines and fees be imposed upon a person convicted of crime. Under existing law, when a person is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation and the court has ordered restitution, the probation officer or the district attorney, with the consent of the victim, is authorized to send the victim's contact information and a copy of the restitution order to the department for the sole purpose of distributing the restitution collected on behalf of the victim.

This bill, when a person who has been ordered to pay restitution is committed to a county jail or placed on postrelease community supervision or mandatory supervision, would authorize the probation officer or district attorney to provide the victim's contact information and a copy of the restitution order, with the victim's consent, to the county agency designated by the board of supervisors to collect and distribute restitution for the sole purpose of distributing the restitution collected on behalf of the victim.

Existing law makes any portion of a restitution fine or restitution fee that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision or mandatory supervision, or completed diversion, enforceable by the California Victim Compensation and Government Claims Board, as specified. Existing law requires the Secretary of the Department of Corrections and Rehabilitation to collect restitution fines and fees from inmates and authorizes the collection of those fines and fees from inmates in county jails by an agency designated by the county board of supervisors. Existing law authorizes the secretary, the local agency designated by the county board of supervisors, or, under specified circumstances, a local collection program to collect restitution fines and fees from parolees. Existing law authorizes the secretary and the local agency to deduct and retain administrative fees for fines collected from parolees.

This bill would authorize the collection of restitution fines or restitution orders, in a manner to be established by the county board of supervisors, by the department or county agency designated by the board from a person who has been released from a state prison or county jail and is subject to postrelease community supervision or mandatory supervision, as specified. The bill would authorize a county board of supervisors to impose a fee upon the individual subject to postrelease community supervision or mandatory supervision to cover the actual administrative cost of collecting the restitution fine and the restitution order, not to exceed 10% of the amount collected, to be deposited in the county's general fund. *The bill would require a county that elects to collect restitution fines and restitution orders pursuant to these provisions to coordinate efforts with the Franchise Tax Board, as specified.*

Existing law requires that persons released from prison be subject either to parole for a specified period of time or to postrelease community supervision for a period not exceeding 3 years. Existing law specifies the conditions of postrelease community supervision.

This bill would require, as a condition of postrelease community supervision, that the person pay court-ordered restitution and restitution fines in the same manner as a person placed on probation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1203c of the Penal Code is amended to read:

1203c. (a) (1) Notwithstanding any other law, whenever a person is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation, whether probation has been applied for or not, or granted and revoked, it shall be the duty of the probation officer of the county from which the person is committed to send to the Department of Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.

(2) If the person is being committed to the jurisdiction of the department for a conviction of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer shall include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

(b) These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Board of State and Community Corrections, except that if the defendant is ineligible for probation, a report of the circumstances surrounding the offense and the prior record and history of the defendant, prepared by the probation officer on request of the court and filed with the court before sentence, shall be deemed to meet the requirements of paragraph (1) of subdivision (a).

(c) In order to allow the probation officer an opportunity to interview, for the purpose of preparation of these reports, the defendant shall be held in the county jail for 48 hours, excluding Saturdays, Sundays, and holidays, subsequent to imposition of sentence and prior to delivery to the custody of the Secretary of the Department of Corrections and Rehabilitation, unless the probation officer has indicated the need for a different period of time.

(d) Whenever a person is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation or a county jail pursuant to subdivision (h) of Section 1170, or is

1 placed on postrelease community supervision or mandatory
2 supervision, and the court has ordered the person to pay restitution
3 to a victim, the following shall apply:

4 (1) If the victim consents, the probation officer of the county
5 from which the person is committed may send the victim's contact
6 information and a copy of the restitution order to the department
7 or to the county agency designated by the board of supervisors to
8 collect and distribute restitution for the sole purpose of distributing
9 the restitution collected on behalf of the victim.

10 (2) Notwithstanding paragraph (1), the district attorney of the
11 county from which the person is committed may send the victim's
12 contact information and a copy of the restitution order to the
13 department or to the county agency designated by the board of
14 supervisors to collect and distribute restitution for the sole purpose
15 of distributing the restitution collected on behalf of the victim if
16 the district attorney finds it is in the best interest of the victim to
17 send that information. If the victim affirmatively objects, the
18 district attorney shall not send the victim's contact information.
19 The district attorney shall not be required to inform the victim of
20 the right to object.

21 (3) The victim's contact information shall remain confidential
22 and shall not be made part of the court file or combined with any
23 public document.

24 SEC. 2. Section 2085.6 is added to the Penal Code, to read:

25 2085.6. (a) When a prisoner owes a restitution fine, or any
26 portion thereof, is subsequently released from the custody of the
27 Department of Corrections and Rehabilitation or a county jail
28 facility, and is subject to postrelease community supervision under
29 Section 3451 or mandatory supervision under subdivision (h) of
30 Section 1170, the person shall have a continuing obligation to pay
31 the restitution fine in full. The restitution fine obligation and any
32 portion left unsatisfied upon placement in postrelease community
33 supervision or mandatory supervision is enforceable and may be
34 collected, in a manner to be established by the county board of
35 supervisors, by the department or county agency designated by
36 the board of supervisors in the county where the prisoner is
37 released. If a county elects to collect restitution fines, the
38 department or county agency designated by the county board of
39 supervisors shall transfer that amount to the California Victim

1 Compensation and Government Claims Board for deposit in the
2 Restitution Fund in the State Treasury.

3 (b) When a prisoner owes payment for a restitution order, or
4 any portion thereof, is released from the custody of the Department
5 of Corrections and Rehabilitation or a county jail facility, and is
6 subject to postrelease community supervision under Section 3451
7 or mandatory supervision under subdivision (h) of Section 1170,
8 the person shall have a continuing obligation to pay the restitution
9 order in full. The restitution order obligation and any portion left
10 unsatisfied upon placement in postrelease community supervision
11 or mandatory supervision is enforceable and may be collected, in
12 a manner to be established by the county board of supervisors, by
13 the agency designated by the county board of supervisors in the
14 county where the prisoner is released. If the county elects to collect
15 the restitution order, the agency designated by the county board
16 of supervisors for collection shall transfer the collected amount to
17 the California Victim Compensation and Government Claims
18 Board for deposit in the Restitution Fund in the State Treasury or
19 may pay the victim directly. The sentencing court shall be provided
20 a record of payments made to the victim and of the payments
21 deposited into the Restitution Fund.

22 (c) Any portion of a restitution order or restitution fine that
23 remains unsatisfied after an individual is released from postrelease
24 community supervision or mandatory supervision shall continue
25 to be enforceable by a victim pursuant to Section 1214 until the
26 obligation is satisfied.

27 (d) At its discretion, a county board of supervisors may impose
28 a fee upon the individual subject to postrelease community
29 supervision or mandatory supervision to cover the actual
30 administrative cost of collecting the restitution fine and the
31 restitution order, not to exceed 10 percent of the amount collected,
32 the proceeds of which shall be deposited into the general fund of
33 the county.

34 (e) ~~Where~~ If a county elects to collect both a restitution fine and
35 a restitution order, the amount owed on the restitution order shall
36 be collected before the restitution fine.

37 (f) *If a county elects to collect restitution fines and restitution*
38 *orders pursuant to this section, the county shall coordinate efforts*
39 *with the Franchise Tax Board pursuant to Section 19280 of the*
40 *Revenue and Taxation Code.*

1 ~~(f)~~

2 (g) For purposes of this section, the following definitions shall
3 apply:

4 (1) “Restitution fine” means a fine imposed pursuant to
5 subdivision (a) of Section 13967 of the Government Code, as
6 operative prior to September 28, 1994, subdivision (b) of Section
7 730.6 of the Welfare and Institutions Code, or subdivision (b) of
8 Section 1202.4.

9 (2) “Restitution order” means an order for restitution to the
10 victim of a crime imposed pursuant to subdivision (c) of Section
11 13967 of the Government Code, as operative prior to September
12 29, 1994, subdivision (h) of Section 730.6 of the Welfare and
13 Institutions Code, or subdivision (f) of Section 1202.4.

14 SEC. 3. Section 3453 of the Penal Code is amended to read:
15 3453. Postrelease community supervision shall include the
16 following conditions:

17 (a) The person shall be informed of the conditions of release.

18 (b) The person shall obey all laws.

19 (c) The person shall report to the supervising county agency
20 within two working days of release from custody.

21 (d) The person shall follow the directives and instructions of
22 the supervising county agency.

23 (e) The person shall report to the supervising county agency as
24 directed by that agency.

25 (f) The person, and his or her residence and possessions, shall
26 be subject to search at any time of the day or night, with or without
27 a warrant, by an agent of the supervising county agency or by a
28 peace officer.

29 (g) The person shall waive extradition if found outside the state.

30 (h) The person shall inform the supervising county agency of
31 the person’s place of residence, employment, education, or training.

32 (i) (1) The person shall inform the supervising county agency
33 of any pending or anticipated changes in residence, employment,
34 education, or training.

35 (2) If the person enters into new employment, he or she shall
36 inform the supervising county agency of the new employment
37 within three business days of that entry.

38 (j) The person shall immediately inform the supervising county
39 agency if he or she is arrested or receives a citation.

1 (k) The person shall obtain the permission of the supervising
2 county agency to travel more than 50 miles from the person's place
3 of residence.

4 (l) The person shall obtain a travel pass from the supervising
5 county agency before he or she may leave the county or state for
6 more than two days.

7 (m) The person shall not be in the presence of a firearm or
8 ammunition, or any item that appears to be a firearm or
9 ammunition.

10 (n) The person shall not possess, use, or have access to any
11 weapon listed in Section 16140, subdivision (c) of Section 16170,
12 Section 16220, 16260, 16320, 16330, or 16340, subdivision (b)
13 of Section 16460, Section 16470, subdivision (f) of Section 16520,
14 or Section 16570, 16740, 16760, 16830, 16920, 16930, 16940,
15 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270, 17280,
16 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720, 17725,
17 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200, 20310,
18 20410, 20510, 20610, 20611, 20710, 20910, 21110, 21310, 21810,
19 22010, 22015, 22210, 22215, 22410, 24310, 24410, 24510, 24610,
20 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405, 32410,
21 32415, 32420, 32425, 32430, 32435, 32440, 32445, 32450, 32900,
22 33215, 33220, 33225, or 33600.

23 (o) (1) Except as provided in paragraph (2) and subdivision
24 (p), the person shall not possess a knife with a blade longer than
25 two inches.

26 (2) The person may possess a kitchen knife with a blade longer
27 than two inches if the knife is used and kept only in the kitchen of
28 the person's residence.

29 (p) The person may use a knife with a blade longer than two
30 inches, if the use is required for that person's employment, the use
31 has been approved in a document issued by the supervising county
32 agency, and the person possesses the document of approval at all
33 times and makes it available for inspection.

34 (q) The person shall waive any right to a court hearing prior to
35 the imposition of a period of "flash incarceration" in a city or
36 county jail of not more than 10 consecutive days for any violation
37 of his or her postrelease supervision conditions.

38 (r) The person shall participate in rehabilitation programming
39 as recommended by the supervising county agency.

(s) The person shall be subject to arrest with or without a warrant by a peace officer employed by the supervising county agency or, at the direction of the supervising county agency, by any peace officer when there is probable cause to believe the person has violated the terms and conditions of his or her release.

(t) The person shall pay court-ordered restitution and restitution fines in the same manner as a person placed on probation.

SEC. 4. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a juvenile or superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than one hundred dollars (\$100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, and any amounts due pursuant to Section 903.1 of the Welfare and Institutions Code may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the juvenile or superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. Unless the victim of the crime notifies the Department of Corrections and Rehabilitation *or county* to the contrary, the Department of Corrections and Rehabilitation *or county* may refer a restitution order to the Franchise Tax Board, in accordance with subparagraph (B) of paragraph (2), for any person subject to the restitution order who is or has been under the jurisdiction of the Department of Corrections and Rehabilitation *or county*.

(2) For purposes of this subdivision:

(A) The amounts referred by the juvenile or superior court, the county, or the state under this section may include an administrative fee and any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

1 (ii) The government entity shall be responsible for distributing
2 the restitution order collections, as appropriate.

3 (iii) The government entity shall ensure, in making the referrals
4 and distributions, that it coordinates with any other related
5 collection activities that may occur by superior courts, counties,
6 or other state agencies.

7 (iv) The government entity shall ensure compliance with laws
8 relating to the reimbursement of the State Restitution Fund.

9 (C) The Franchise Tax Board shall establish criteria for ~~referral~~,
10 ~~which referral that~~ shall include setting forth a minimum dollar
11 amount subject to referral and collection.

12 (b) The Franchise Tax Board, in conjunction with the Judicial
13 Council, shall seek whatever additional resources are needed to
14 accept referrals from all 58 counties or superior courts.

15 (c) Upon written notice to the debtor from the Franchise Tax
16 Board, any amount referred to the Franchise Tax Board under
17 subdivision (a) and any interest thereon, including any interest on
18 the amount referred under subdivision (a) that accrued prior to the
19 date of referral, shall be treated as final and due and payable to the
20 State of California, and shall be collected from the debtor by the
21 Franchise Tax Board in any manner authorized under the law for
22 collection of a delinquent personal income tax liability, including,
23 but not limited to, issuance of an order and levy under Article 4
24 (commencing with Section 706.070) of Chapter 5 of Division 2
25 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
26 provided for earnings withholding orders for taxes.

27 (d) (1) Part 10 (commencing with Section 17001), this part,
28 Part 10.7 (commencing with Section 21001), and Part 11
29 (commencing with Section 23001) shall apply to amounts referred
30 under this article in the same manner and with the same force and
31 effect and to the full extent as if the language of those laws had
32 been incorporated in full into this article, except to the extent that
33 any provision is either inconsistent with this article or is not
34 relevant to this article.

35 (2) Any information, information sources, or enforcement
36 remedies and capabilities available to the court or the state referring
37 to the amount due described in subdivision ~~(a)~~; (a) shall be
38 available to the Franchise Tax Board to be used in conjunction
39 with, or independent of, the information, information sources, or
40 remedies and capabilities available to the Franchise Tax Board for

1 purposes of administering Part 10 (commencing with Section
2 17001), this part, Part 10.7 (commencing with Section 21001), or
3 Part 11 (commencing with Section 23001).

4 (e) The activities required to implement and administer this part
5 shall not interfere with the primary mission of the Franchise Tax
6 Board to administer Part 10 (commencing with Section 17001)
7 and Part 11 (commencing with Section 23001).

8 (f) For amounts referred for collection under subdivision (a),
9 interest shall accrue at the greater of the rate applicable to the
10 amount due being collected or the rate provided under Section
11 19521. When notice of the amount due includes interest and is
12 mailed to the debtor and the amount is paid within 15 days after
13 the date of notice, interest shall not be imposed for the period after
14 the date of notice.

15 (g) ~~In no event shall a~~ A collection under this article ~~be construed~~
16 ~~as is not~~ a payment of income taxes imposed under Part 10
17 (commencing with Section 17001) or Part 11 (commencing with
18 Section 23001).